

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

RUSSELL A. RUNNELS,

Plaintiff,

v.

CITY OF VANCOUVER, a municipal
entity; the VANCOUVER POLICE
DEPARTMENT; and RYAN JUNKER,

Defendants.

CASE NO. C10-5913BHS

ORDER GRANTING
DEFENDANTS' MOTION
PARTIAL SUMMARY
JUDGMENT

This matter comes before the Court on the motion of Defendants City of Vancouver ("City"), Vancouver Police Department ("VPD"), and Ryan Junker ("Junker") (collectively "Defendants") for partial summary judgment. Dkt. 20. The Court has considered the pleadings filed in support of and in opposition to the motion and the remainder of the file and hereby grants the motion for the reasons stated herein.

I. PROCEDURAL HISTORY

On February 24, 2011, Defendants moved for partial summary judgment on all of Plaintiff Russell A. Runnels's ("Runnels") claims with the exception of his cause of action brought under Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12131, et seq. ("ADA"). Dkt. 20. On March 11, 2011, Runnels responded (Dkt. 25) and

1 on March 18, 2011, Defendants replied (Dkt. 27). On March 22, 2011, Runnels filed a
2 motion for extension of time to file his declaration in support of opposition to the motion
3 for partial summary judgment. Dkt. 29. Also on March 22, 2011, Runnels filed a motion
4 for leave to file an amended complaint. Dkt. 30. On April 1, 2011, the Court signed an
5 order on the parties' stipulation in which they agreed to dismissal of Runnels's negligence
6 claim and to his request to file his second amended complaint, acknowledging that the
7 Court's decision on Defendants' motion for partial summary judgment would govern
8 what claims remain at issue in the amended complaint. Dkt. 35. On April 6, 2011,
9 Defendants filed a revised response to Runnels's motion for an extension of time to file
10 his declaration (Dkt. 37) and on April 7, 2011, Runnels replied. (Dkt. 39).

11 **II. FACTUAL BACKGROUND**

12
13 On May 1, 2008, Clark Regional Emergency Services agency received a report of
14 a traffic hazard in which an older, brown Buick was stalled in the southbound left turn
15 lane on East Fourth Plain Boulevard in Vancouver, Washington. Dkts. 21 at 8 & 29-1 at
16 2. Junker, a VPD officer, was dispatched to the disabled vehicle. Dkt. 21 at 5. The other
17 occupants of the vehicle included passengers Runnels and Joseph Stewart, and the driver,
18 Branda Fisher ("Fisher"). Dkts. 21 at 8 & 29-1 at 4. Runnels is an African-American
19 male with a physical disability he characterizes as "'webbed' arms – i.e. skin from [his]
20 upper torso is attached to [his] arms making a 'webbed' effect – that physically restricts
21 [his] ability to raise, bend or move [his] arms, or to put [his] arms fully behind [his]
22 back." Dkt. 29-1 at 2.

23 According to Runnels, upon arrival at the scene, "Junker demanded that each
24 person in the car give his or her name and produce identification," and then proceeded to
25 run a "criminal records check on each individual in the car." Dkt. 29-1 at 1. Junker does
26 not specify when he requested the passengers' identification. Dkt. 21 at 5-6.

1 After making contact with the driver, Junker reported that “[a] records check of
2 her name showed she was the protected person in a no contact order with a black male
3 listed as a respondent.” Dkt. 21 at 6. Junker also reported “that there was a black male
4 seated in the rear of the vehicle who identified himself as Russell RUNNELS.” *Id.* This
5 was “not the same name as on the no contact order, however RUNNELS did not have
6 any identification on him or a way to verify it was his true name.” *Id.* Junker then ran a
7 records check to confirm Runnels’s identity. *Id.* Junker’s record check confirmed that
8 Runnels was not the name on the no contact order but showed an outstanding
9 misdemeanor warrant for Runnels’s arrest. *Id.*; *see also* Dkt. 29-1 at 2.

10 Pursuant to the warrant, Junker placed Runnels under arrest. Dkts. 21 at 6 & 29-1
11 at 3. According to Junker, “Runnels was taken into custody without incident and
12 transported to Clark County [jail].” Dkt. 21 at 6. Runnels alleges that Junker forcibly
13 handcuffed him and that he sustained pain and injury as a result of Junker’s attempt to
14 handcuff him behind his back. Dkt. 29-1 at 3-4. The Court notes that the parties’ factual
15 dispute over the manner in which Runnels’s arrest took place is not a question of material
16 fact relevant to the instant motion.

18 III. DISCUSSION

19 As an initial matter, because the Court concludes that, even considering as
20 evidence the declaration submitted by Runnels in support of his opposition to Defendants’
21 motion (Dkt. 29-1), Defendants’ motion for partial summary judgment should be granted.
22 The Court also concludes that Runnels’s motion to file his declaration should also be
23 granted.

24 In the instant motion, Defendants move the court to grant summary judgment and
25 dismiss the following: (1) Junker’s alleged violation of 42 U.S.C. § 1983; (2) the City’s
26 alleged violation of § 1983; and (3) all of the claims alleged against VPD. Defendants’
27 motion also sought summary judgment on Runnels’s negligence claim, which he has not
28

1 included in his second amended complaint and therefore the Court need not address such
2 claim. *See* Dkts. 35 & 40.

3 **A. Summary Judgment Standard**

4 Summary judgment is proper only if the pleadings, the discovery and disclosure
5 materials on file, and any affidavits show that there is no genuine issue as to any material
6 fact and that the movant is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c).
7 The moving party is entitled to judgment as a matter of law when the nonmoving party
8 fails to make a sufficient showing on an essential element of a claim in the case on which
9 the nonmoving party has the burden of proof. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323
10 (1986). There is no genuine issue of fact for trial where the record, taken as a whole,
11 could not lead a rational trier of fact to find for the nonmoving party. *Matsushita Elec.*
12 *Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986) (nonmoving party must
13 present specific, significant probative evidence, not simply “some metaphysical doubt”).
14 *See also* Fed. R. Civ. P. 56(e). Conversely, a genuine dispute over a material fact exists if
15 there is sufficient evidence supporting the claimed factual dispute, requiring a judge or
16 jury to resolve the differing versions of the truth. *Anderson v. Liberty Lobby, Inc.*, 477
17 U.S. 242, 253 (1986); *T.W. Elec. Serv., Inc. v. Pac. Elec. Contractors Ass’n*, 809 F.2d
18 626, 630 (9th Cir. 1987).

19 The determination of the existence of a material fact is often a close question. The
20 Court must consider the substantive evidentiary burden that the nonmoving party must
21 meet at trial – e.g., a preponderance of the evidence in most civil cases. *Anderson*, 477
22 U.S. at 254; *T.W. Elec. Serv., Inc.*, 809 F.2d at 630. The Court must resolve any factual
23 issues of controversy in favor of the nonmoving party only when the facts specifically
24 attested by that party contradict facts specifically attested by the moving party. The
25 nonmoving party may not merely state that it will discredit the moving party’s evidence at
26 trial in the hopes that evidence can be developed at trial to support the claim. *T.W. Elec.*
27
28

1 *Serv., Inc.*, 809 F.2d at 630 (relying on *Anderson*, 477 U.S. at 255). Conclusory,
2 nonspecific statements in affidavits are not sufficient, and missing facts will not be
3 presumed. *Lujan v. Nat'l Wildlife Fed'n*, 497 U.S. 871, 888-89 (1990).

4 **B. Junker's Liability Under § 1983**

5 Section 1983 states:

6 Every person who, under color of any statute, ordinance, regulation,
7 custom, or usage, of any State or Territory or the District of Columbia,
8 subjects, or causes to be subjected, any citizen of the United States or other
9 person within the jurisdiction thereof to the deprivation of any rights,
privileges, or immunities secured by the Constitution and laws, shall be
proceeding for redress,

10 42 U.S.C. § 1983. Thus, a right of action under § 1983 must be premised on a
11 constitutional violation or deprivation of rights under federal law. *See Nurre v.*
12 *Whitehead*, 580 F.3d 1087, 1092 (9th Cir. 2009) (citing *Johnson v. Knowles*, 113 F.3d
13 1114, 1117 (9th Cir. 1997) (“To state a claim for relief under section 1983, the Plaintiffs
14 must plead two essential elements: (1) that the Defendants acted under color of state law;
15 and (2) that the [d]efendants caused them to be deprived of a right secured by the
16 Constitution and laws of the United States.” (internal citation omitted))).

17 Junker argues that qualified immunity bars Runnels's § 1983 claim against him
18 because Runnels's allegation that Junker violated the Fourth Amendment by running a
19 records check was not a clearly established constitutional violation at the time the events
20 occurred. Dkt. 20 at 4-14. Runnels maintains that Junker is not entitled to qualified
21 immunity because Junker did in fact violate Runnels's constitutional rights under the
22 Fourth Amendment and that there are disputed facts surrounding Junker's treatment of
23 Runnels, which should preclude summary judgment. Dkt. 25 at 26.

24 **1. Doctrine of Qualified Immunity**

25 “Qualified immunity is an entitlement not to stand trial or face the other burdens
26 of litigation.” *Saucier v. Katz*, 533 U.S. 194, 200 (2001) (internal quotation marks
27
28

omitted). Courts “evaluate a defendant's qualified immunity defense using a two-step inquiry.” *Ramirez v. City of Buena Park*, 560 F.3d 1012, 1020 (9th Cir. 2009). It is within a court’s “sound discretion in deciding which of the two prongs of the qualified immunity analysis should be addressed first in light of the circumstances in the particular case at hand.” *Id.* (quoting *Pearson v. Callahan*, 129 S. Ct. 808, 818 (2009)). The two prongs are (1) whether, “[t]aken in the light most favorable to the party asserting the injury, . . . the facts alleged show the officer’s conduct violated a constitutional right, and (2) whether the right was clearly established.” *Ramirez*, 560 F.3d at 1020 (quoting *Saucier*, 533 U.S. at 201-202).

2. Violation of Runnels’s Constitutional Rights

a. Freedom from Unlawful Search and Seizure

Runnels argues that Junker violated his right to be free from warrantless search and seizure under the Fourth Amendment to the United States Constitution. Dkt. 26 at 9. Specifically, Runnels argues the seizure was unlawful because Junker did not have probable cause to seize him and because the seizure was objectively unreasonable. Dkt. 25 at 26.

i. Unlawful Seizure

Junker concedes that Runnels was seized. Dkt. 20 at 11. However, Junker argues that his records check was not an independent seizure. *Id.* Runnels maintains that the records check was a seizure and that it was done unlawfully and without probable cause. Dkt. 25 at 11-12. Additionally, Runnels asserts that there was no traffic stop because Junker was dispatched to a disabled auto. Dkt. 25 at 13.

The Fourth Amendment guarantees “the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures.” Temporary detention of individuals during an automobile stop by the police, even if only for a brief period and for a limited purpose, constitutes a “seizure” of “persons” within

1 the meaning of this provision. *Whren v. United States*, 517 U.S. 806, 810-811 (1996)
2 (internal citations omitted). Additionally, according to the United States Supreme Court,
3 when a police officer makes a traffic stop, a passenger in the car, like the driver, is seized
4 for Fourth Amendment purposes. *Brendlin v. California*, 551 U.S. 249, 255 (2007).

5 Because an automobile stop is a seizure under the Fourth Amendment, it is also
6 “subject to the constitutional imperative that it not be unreasonable under the
7 circumstances.” *Whren*, 517 U.S. at 811. The constitutional reasonableness of traffic
8 stops does not depend on the actual motivations of the individual officers involved. *Id.* at
9 813. Further, an automobile stop “is reasonable where the police have probable cause to
10 believe that a *traffic violation has occurred*.” *Id.* at 810 (emphasis added).

11 To the extent that Runnels is asserting that this incident was not a traffic stop,
12 such assertion is unsupported by any legal authority and the Court finds that such
13 argument is without merit. Dkts. 25 at 9-13 & 29-1. It is undisputed that Junker was
14 investigating a stalled vehicle which constitutes a traffic offense under Washington law
15 and Runnels has presented no authority for the Court to conclude that such an
16 investigation is treated any differently due to the fact that he was called to the scene.

17 As to Runnels’s argument “that the evidence supports the finding that the seizure
18 was unlawful” (Dkt. 25 at 11), the Court disagrees. In Washington, police officers act
19 under statutory authority to enforce state laws. *See* RCW 10.93.070. Stopping, standing
20 or parking in an intersection is prohibited by RCW 46.61.570(1)(a)(iii). Runnels
21 concedes that the vehicle was stalled at or near an intersection. Dkts. 7 at 3 & 25 at 2,
22 29-1 at 2. In the course of his duties as a VPD officer, Junker was dispatched to
23 investigate the disabled auto (*see* Dkt. 21 at 5) which, when it was reported, was
24 categorized as “Traf Hazard.” *Id.* at 8. These facts are sufficient for the Court to
25 conclude that the seizure was reasonable and lawful under the Fourth Amendment as
26
27
28

1 Junker had probable cause to believe that a traffic violation had occurred. *See Whren*,
2 517 U.S. at 811.

3 **ii. Unreasonable Search**

4 Runnels also argues that Junker's request for identification and subsequent
5 records check constituted an unreasonable government search, violated his expectation
6 of privacy and thus violated his Fourth Amendment rights. See Dkt. 25 at 13- 15. Junker
7 argues that he did not violate Runnels's Fourth Amendment rights by demanding
8 identification or by running a records check of Runnels's name. Dkt. 20 at 10-11.

9 The Supreme Court has held that police may ask persons, who have legitimately
10 been stopped, for identification without conducting a Fourth Amendment search or
11 seizure. *See Hiibel v. Sixth Judicial Dist. Ct. of Nev., Humboldt County*, 542 U.S. 177,
12 185 (2004) (stating that "[i]n the ordinary course [of a police investigation] a police
13 officer is free to ask a person for identification without implicating the Fourth
14 Amendment.") Thus, police questioning, by itself, is unlikely to result in a Fourth
15 Amendment violation. *INS v. Delgado*, 466 U.S. 210, 216 (1984). Even if the officer's
16 "actions during [a] traffic stop implicate the Fourth Amendment, they do not
17 [necessarily] violate it." *U.S. v. Diaz-Castaneda*, 494 F.3d 1146, 1153 (9th Cir. 2007)
18 (quoting *United States v. Foreman*, 369 F.3d 776, 781 (4th Cir. 2004) (stating that "the
19 law has become well established that during a routine traffic stop, an officer may request
20 a driver's license and . . . run a computer check")). As Runnels points out:

22 The touchstone of the Fourth Amendment is reasonableness, and the
23 reasonableness of a search is determined "by assessing, on the one hand, the
24 degree to which it intrudes upon an individual's privacy and, on the other,
the degree to which it is needed for the promotion of legitimate
governmental interests."

25 *United States v. Knights*, 534 U.S. 112, 118-119 (2001) (quoting *Wyoming v. Houghton*,
26 526 U.S. 295, 300 (1999)).
27
28

1 Runnels contends that “Junker had no legitimate criminal justice purpose in
2 running Runnels’s name in a database of records.” Dkt. 25 at 15. Junker reported that his
3 records check indicated that the driver was

4 the protected person in a no contact order with a black male listed as the
5 respondent. There was a black male seated in the rear of the vehicle who
6 identified himself as Russell Runnels. It was not the same name as on the no
contact order, however, Runnels did not have any identification on him.

7 Dkt. 21 at 6. Junker then ran a records check to confirm Runnels’s identity. Dkts. 21 at 6
8 & 25 at 3.

9 In weighing the government’s interest against the intrusion to Runnels’s privacy
10 the Court notes that Junker has a duty to enforce a protective order. *See* RCW
11 10.31.100(2)(a).¹ Further, the legislature specifically intended this statute to: “[i]ncrease
12 the safety afforded to individuals who seek protection of public and private agencies.”
13 *Id.* Here, Junker sought confirmation that Runnels was not the party named on Fisher’s
14 protective order. *See* Dkt. 21 at 6 (reporting “Runnels was not the respondent in the
15 order”).

16 Runnels’s reliance on *Ramirez v. City of Buena Park*, 560 F.3d 1012 (9th Cir.
17 2009), and *Bennett v. City of Eastpointe*, 410 F. 3d 810, 822 (6th Cir. 2005), to support
18 his argument that the records search was improper is misplaced because the intrusion at
19 issue in those cases was the reasonableness of pat-down searches by the officers, that is,
20 the reasonableness of physical intrusions. Here, there was no physical intrusion but
21 rather a routine confirmation of identities.

22 Likewise, Runnels’s reliance on cases lacking probable cause for property
23 searches does not support Runnels’s allegation that Junker’s record check was an
24

25 ¹ RCW 10.31.100(2)(a) provides that “[a] police officer *shall* arrest and take into
26 custody, . . . a person without a warrant when the officer has probable cause to believe that:
27 (a) An order has been issued of which the person has knowledge under RCW 26.44.063, or
28 chapter 7.90, 10.99, 26.09, 26.10, 26.26, 26.50, or 74.34 RCW restraining the person and the
person has violated the terms of the order (Emphasis added.)

1 unlawful search. Dkt. 25 at 14-15; *see also United States v. Jacobsen*, 466 U.S. 109, 114
2 (1984); *Unites States v. Angulo-Fernandez*, 53 F.3d 1177, 1180 (10th Cir. 1995).

3 Runnels's property was not searched. Furthermore, Runnels offers no authority
4 indicating that the type of records check at issue is unlawful. Dkt. 25 at 13-15. Instead,
5 citing to *United States v. McManus*, 70 F. 3d 990 (8th Cir. 1995), Runnels validates the
6 proposition that data bases used "as part of an investigation" have a legitimate criminal
7 justice purpose. Dkt. 25 at 15.

8 Here, the government's interests in enforcing and investigating no contact orders
9 as well as in protecting the safety of protected persons are legitimate criminal justice
10 purposes. Runnels concedes that he had no identification (Dkt. 25 at 3), and therefore,
11 the Court concludes that the records check Junker conducted to confirm Runnels's
12 identity and to differentiate him from the identity of the male listed on the protective
13 order was objectively reasonable in that the government's interest outweighed Runnels's
14 privacy interest.
15

16 **b. Violation of the ADA**

17 Runnels maintains that "[a]lthough Junker cannot be individually liable under the
18 ADA for his treatment of Runnels, he can face liability under Section 1983 for depriving
19 Runnels of his federal rights including his right to non-discriminatory treatment under
20 Title II of the ADA." Dkt. 25 at 21. Junker argues that "a plaintiff cannot bring an action
21 under 42 U.S.C. § 1983 against a State official in h[is] individual capacity to vindicate
22 rights created by Title II of the ADA." Dkt. 27 at 8 (quoting *Vinson v. Thomas* 288 F.3d
23 1145, 1156 (9th Cir. 2002)).

24 In *Vinson v. Thomas*, the Ninth Circuit "considered whether a public official can
25 be sued in his or her individual capacity under 42 U.S.C. §1 983 predicated upon alleged
26 violations of the ADA or the Rehabilitation Act." 288 F.3d at 1155. In its analysis, the
27 *Vinson* court stated:
28

1 Section 1983 does not confer rights, but instead allows individuals to
2 enforce rights contained in the United States Constitution and defined by
3 federal law. *See Buckley v. City of Redding*, 66 F.3d 188, 190 (9th Cir.
4 1995). An alleged violation of federal law may not be vindicated under §
5 1983, however, where: “(1) the statute does not create an enforceable right,
6 privilege, or immunity, or (2) Congress has foreclosed citizen enforcement
7 in the enactment itself, either explicitly, or implicitly by imbuing it with its
8 own comprehensive remedial scheme.” *Buckley*, 66 F.3d at 190 (citing
 Wilder v. Virginia Hosp. Ass’n, 496 U.S. 498, 508 (1990)). “[A]
 comprehensive remedial scheme for the enforcement of a statutory right
 creates a presumption that Congress intended to foreclose resort to more
 general remedial schemes to vindicate that right.” *Lollar v. Baker*, 196 F.3d
 603, 609 (5th Cir. 1999) (citing *Middlesex County Sewerage Auth. v.*
 National Sea Clammers Ass’n, 453 U.S. 1, 20 (1981)).

9 *Id.* The Ninth Circuit held as a matter of law that “a plaintiff cannot bring an action
10 under § 1983 against a state official in her individual capacity to vindicate rights created
11 by Title II of the ADA.” *Id.* at 1156.

12 Therefore, the Court concludes that Runnels’s argument that Junker can face
13 liability under § 1983 for the deprivation of rights secured by the ADA is without merit.

14 **3. Clearly Established Law**

15 Even if the Court were to conclude that, based on the facts as alleged by Runnels,
16 Junker may have violated Runnels’s Fourth Amendment rights, it was not a violation that
17 was clearly established at the time the events occurred. Thus, even if the Court were to
18 conclude that the government’s interests in running a records check on Runnels’s name
19 did not outweigh his right to privacy, and therefore a violation of his Fourth Amendment
20 rights may have occurred, such violation was not clearly established based on the case
21 law as discussed above. In other words, under the doctrine of qualified immunity, the
22 Court may not hold Junker liable under § 1983 for a violation of Runnel’s rights that was
23 not clearly established at the time the violation took place. *See Ramirez*, 560 F.3d at
24 1020. Therefore, because the case law, as discussed above, indicates that Junker did not
25 even violate Runnels’s rights, such a violation cannot be argued as clearly established
26 under the law. Therefore, Junker is entitled to qualified immunity from Runnels’s § 1983
27
28

1 claim based on a violation of his Fourth Amendment rights because such violation, if
2 any, was not clearly established at the time the events at issue took place.

3 **C. The City's Liability Under 42 U.S.C. § 1983**

4 The City moves the Court to dismiss Runnels's § 1983 claim against it because
5 "as a threshold matter, a party seeking recovery under Section 1983 against a
6 municipality cannot proceed on a theory of respondeat superior." Dkt. 20 at 14.
7 Additionally, the City argues that Runnels has failed to show that the City's policy was
8 unconstitutional or provide "proof of a direct causal link between the municipal action
9 and the deprivation of federal rights." Dkt. 27 at 10. Runnels argues that the City
10 "demonstrated deliberate indifference to the rights of persons with disabilities such as
11 Runnels." Dkt. 25 at 23.

12 As an initial matter, the Court notes that the Supreme Court has rejected the
13 contention that only unconstitutional policies are actionable under § 1983. *City of*
14 *Canton v. Harris*, 489 U.S. 378, 387 (1989). Thus, the City's argument on this ground
15 fails. In addition, in *Monell v. Dep't of Social Services of City of New York*, 436 U.S.
16 658, 694-95 (1978), the Supreme Court held that a municipality can be held liable under
17 § 1983 only when the municipality itself causes the constitutional violation and that
18 respondeat superior liability will not attach under § 1983 in municipality liability claims.
19 Thus, the Court concludes that to the extent that the City's liability is based on
20 respondeat superior, Runnels's claim fails as a matter of law.

21
22 **1. Inadequate Training or Supervision**

23 In addition to his respondeat superior theory of liability, Runnels maintains that
24 the City is liable because it "inadequately trained or supervised its police officers, this
25 failure to train or supervise was a city policy, one of the officers [allegedly] violated
26 [Runnels's] constitutional rights, and the violation of [Runnels's] rights was caused by
27 that [c]ity policy." Dkt. 25 at 22. The City maintains that Runnels must show proof of "a
28

1 direct causal link between the municipal action and the deprivation of federal rights” and
2 that he has failed to do so. Dkt. 27 at 10.

3 A municipality may be held liable for damages under § 1983 where the plaintiff
4 identifies a “municipal policy or custom that caused the plaintiff’s injury.” *Bd. of County*
5 *Comm’rs of Bryan County, Oklahoma v. Brown*, 520 U.S. 397, 403 (1997). Similarly, a
6 plaintiff can prevail on a *Monell* claim against a city only by identifying “a deliberate
7 policy, custom, or practice that was the ‘moving force’ behind the constitutional
8 violation he suffered.” *Galen v. County of Los Angeles*, 477 F.3d 652, 667 (9th Cir.
9 2007) (citing *Monell*, 436 U.S. at 694-95). Moreover, it is not enough to identify a city
10 policy or conduct attributable to the city. “[A] plaintiff must show that the municipal
11 action was taken with the requisite degree of culpability and must demonstrate a direct
12 causal link between the municipal action and the deprivation of federal rights.” *Bd. of*
13 *County Comm’rs*, 520 U.S. at 403.

14
15 The Supreme Court has also held that a municipality may be liable for due
16 process violations when it fails to train its employees. *City of Canton v. Harris*, 489 U.S.
17 378, 380 (1989). However, “the inadequacy of police training may serve as the basis for
18 § 1983 liability only where the failure to train amounts to deliberate indifference to the
19 rights of persons with whom the police come into contact.” *Id.* at 388. Therefore, to
20 succeed in such a case, a plaintiff must show that “the need for more or different training
21 is so obvious, and the inadequacy so likely to result in the violation of constitutional
22 rights, that the policymakers of the city can reasonably be said to have been deliberately
23 indifferent to the need.” *Id.* at 390.

24 **a. Deliberate Indifference**

25 Runnels argues that the City “was deliberately indifferent to the needs and federal
26 rights of persons with disabilities such as Runnels.” Dkt. 25 at 24. Specifically, Runnels
27 points to Section 12.09.00 in the VPD manual as evidence of this indifference. Dkts. 25
28

1 at 23 & 26 at 5. Runnels maintains that the policy manual demonstrates deliberate
2 indifference to persons with disabilities because “[t]he VPD Manual contains nothing
3 describing the responsibility of VPD officers to reasonably accommodate the disability
4 of an arrestee or even any training or required awareness in the ADA generally.” Dkt. 25
5 at 23. Additionally, Runnels contends that liability is warranted because “[n]either that
6 section nor any other indicates that a police officer should carefully handcuff a person
7 whose disability makes it impossible to be handcuffed behind the back without injury”
8 and that there is no other evidence to contradict this assertion. Dkt. 25 at 23.

9
10 To survive summary judgment Runnels was required to demonstrate that the
11 policymakers of the City can reasonably be said to have been deliberately indifferent to
12 the need at issue. *See City of Canton*, 489 U.S. at 390. In addition, as pointed out by
13 Runnels, to establish a deliberately indifferent policy via a failure to train “a plaintiff
14 must present some evidence that the city knew or should have known of a need to train
15 in a particular area and the municipality deliberately chose not to take any action.” Dkt.
16 25 at 23 (relying on *Schorr v. Borough of Lemoyne*, 243 F. Supp. 2d 232 (M.D. Pa.
17 2003)).

18 However, rather than supporting his position, the VPD policy that Runnels relies
19 on undermines his assertions. The policy itself negates the proposition that the City was
20 deliberately indifferent in stating:

21 Whenever an officer has a person in custody to be transported, that person
22 shall be handcuffed with the hands behind the back. *Handcuffs may be*
23 *placed in front during exceptional circumstances such as prisoner injury*
24 *or physical characteristics which make handcuffing behind the back*
impractical. The handcuffs will be double-locked to prevent unnecessary
injury and escape.

25 Dkt. 26 at 5 (emphasis added). The policy specifically includes an exception in the
26 handcuffing procedure for injury or physical characteristics. While Runnels is correct
27 that the policy does not say “that a police officer should carefully handcuff a person
28

1 whose disability makes it impossible to be handcuffed behind the back without injury,”
2 Runnels has cited no authority to establish that this specificity is required or provided
3 any evidence that the allowance for accommodation in the handcuffing procedure as
4 written amounts to deliberate indifference. Dkt. 25 at 21-24.

5 Additionally, Runnels provides no evidence to support his allegations of
6 insufficient training. Dkts. 26 at 5 and 29-1. Thus, there is nothing before the Court to
7 establish that the City knew of or should have known of the need for more training, let
8 alone that the City deliberately chose not to act.

9 Therefore, the Court concludes that Runnels’s claim of deliberate indifference
10 fails because Runnels has failed to submit any evidence to demonstrate that the need for
11 more or different training by the City is at all obvious or that any inadequacy was likely
12 to result in the violation of constitutional rights. *City of Canton*, 489 U.S. at 388.

14 **b. Causal Link**

15 Moreover, while Runnels does identify a city policy regarding handcuffing (Dkt.
16 26 at 5), he fails to provide any evidence that demonstrates how this policy caused a
17 violation of his rights. It is not enough to just identify a city policy; a plaintiff “must
18 demonstrate a direct causal link between the municipal action and the deprivation of
19 federal rights.” *Bd. of County Comm’rs*, 520 U.S. at 403. The absence of information
20 about the ADA in the VPD manual is insufficient to establish that this policy was the
21 “moving force” behind an alleged constitutional violation. *Galen*, 477 F.3d at 667.
22 Because Runnels has not established the requisite degree of culpability or proof of a
23 causal link between the City’s policy and the alleged deprivation of his federal rights, the
24 Court concludes that this argument also fails.

25 **2. Conclusion**

26 Therefore, because Runnels has failed to provide proof that a municipal policy or
27 custom caused his alleged injury or that the City’s police training amounted to deliberate
28

1 indifference, the Court concludes that Defendants are entitled to summary judgment on
2 Runnels's § 1983 claim against the City.

3 **D. VPD's Amenability to Suit**

4 VPD argues that Runnels's claims against it are improper because "police
5 departments in Washington do not have the capacity to be sued." Dkt. 20 at 15-16.
6 Runnels argues that Washington law does not support this proposition. Dkt. 25.

7 A local government unit or municipality can be sued as a "person" under § 1983.
8 *Monell*, 436 U.S. 658 at 691. However, many circuits do not consider police departments
9 suable entities separate from the municipality itself. *See West v. Waymire*, 114 F.3d 646,
10 647 (7th Cir.1997); *Ricketts v. City of Hartford*, 74 F.3d 1397, 1400 n. 1 (2nd Cir. 1996);
11 *Dean v. Barber*, 951 F.2d 1210, 1214-15 (11th Cir.1992). The Ninth Circuit has not
12 explicitly adopted this view, despite a concurring opinion in *United States v. Kama*, 394
13 F.3d 1236, 1240 (9th Cir. 2005), stating that "municipal police departments and bureaus
14 are generally not considered 'persons' within the meaning of 42 U.S.C. § 1983." Instead,
15 the Ninth Circuit has determined that state law controls the issue of whether a police
16 department may be sued as a separate entity apart from a city. *Streit v. County of Los*
17 *Angeles*, 236 F.3d 552, 565 (9th Cir. 2001) (quoting *Shaw v. State of California Dept. of*
18 *Alcoholic Beverage Control*, 788 F.2d 600, 604 (9th Cir.1986) ("Under [R]ule 17(b) of
19 the Federal Rules of Civil Procedure, the Police Department's capacity to be sued in
20 federal court is to be determined by the law of" the state in which the suit is brought).

22 Washington courts agree that city or county departments are not legal entities
23 subject to suit. *See City of Seattle v. Dutton*, 147 Wash. 224, 226, 265 P. 729 (1928)
24 (City of Seattle liable for acts of negligence committed by Department of Parks because
25 the department "is not an entity separate and apart from the city."); *Nolan v. Snohomish*
26 *County*, 59 Wn. App. 876, 883, (1990) ("in a legal action involving a county, the county
27 itself is the only legal entity capable of suing and being sued"); *see also Moreno-Garcia*
28

1 *v. Yakima Police Dept.*, 2010 WL 2803247, *2 (E.D. Wash. 2010); *Burton v. Hale*, 2008
2 WL 623718, *2 (W.D. Wash. 2008).

3 Here, Runnels's analysis of Washington case law is flawed. *See* Dkt. 25 at 24.
4 First, his reliance on *Koenig v. City of Des Moines*, 158 Wn.2d 173, 177 (2006), is
5 misplaced because while that case involved obtaining records from both the city and the
6 police department, the police department was not sued as an entity independent from the
7 city. Next, in arguing that *Stiffarm v. City of Pullman Police Dep't*, 2007 WL 870343, at
8 *6 (E.D. Wash. 2007) does not stand for the proposition that the police department is an
9 improper defendant (Dkt. 25 at 24), Runnels overlooks the court's unambiguous
10 language in its order. In *Stiffarm*, the court's order at the end of the opinion specifically
11 found that the Pullman Police Department did not have the capacity to be sued. *Id.*

12
13 The Court adopts the reasoning in *Stiffarm* and concludes that because current
14 Washington case law indicates that a police department is not a legal entity with the
15 capacity to be sued, Defendants are entitled to summary judgment of Runnels's claims
16 against VPD. The Court notes that any claims Runnels has against VPD can be brought
17 against the City as the proper entity with the capacity to be sued. *See Nolan*, 59 Wn.
18 App. at 883.

19 IV. ORDER

20 Therefore, it is hereby **ORDERED** as follows:

21 (1) Runnels's motion for extension of time to file his declaration (Dkt. 29) is
22 **GRANTED**;

23 (2) Defendants' motion for partial summary judgment (Dkt. 20) is
24 **GRANTED** as discussed herein;

25 (3) Runnels's § 1983 claims against Junker based on violations of the Fourth
26 Amendment and the ADA are **DISMISSED with prejudice**;

1 (4) Runnels's § 1983 claims against the City are **DISMISSED with**
2 **prejudice**; and

3 (5) Runnels's claims against VPD are **DISMISSED with prejudice**.

4 DATED this 27th day of April, 2011.

5
6 

7 BENJAMIN H. SETTLE
8 United States District Judge
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28